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11 Attorneys for Plaintiff
12 SAN ANTONIO WINERY, INC.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF LOS ANGELES**

15 SAN ANTONIO WINERY, INC., a
16 California corporation,

17 Plaintiff,

18 v.

19 ANHEUSER-BUSCH INBEV S.A.,
20 a Belgium company,

21 Defendant.

) Case No.

) COMPLAINT FOR:

-) 1. BREACH OF COEXISTENCE
) AGREEMENT
) 2. DECLARATORY RELIEF OF
) NO TRADEMARK
) INFRINGEMENT

) REQUEST FOR JURY TRIAL

1 Plaintiff San Antonio Winery, Inc., through its attorneys Cislo & Thomas
2 LLP, alleges as follows:

3 **THE PARTIES**

4 1. Plaintiff San Antonio Winery, Inc. (“Plaintiff” or “San Antonio”) is a
5 California corporation having a principal place of business located at 737 Lamar
6 Street, Los Angeles, California 90031 and is the owner of the number one imported
7 Italian wine in the United States, Stella Rosa®.

8 2. Upon information and belief, Defendant Anheuser-Busch InBev S.A.
9 (“InBev”) is a company organized under the laws of Belgium with a principal place
10 of business at Grand-Place 1, 1000 Brussels, Belgium. InBev is a global beer brewer
11 with brands such as Budweiser®, Corona®, Modelo®, and Stella Artois®.

12 **JURISDICTION AND VENUE**

13 3. This Court has subject matter jurisdiction pursuant to California
14 Constitution Article VI, Section 5 and personal jurisdiction over Defendants in
15 accordance with Section 410.10 of the Code of Civil Procedure on the grounds that a
16 substantial part of the parties business dealings, acts, omissions, and/or transactions
17 throughout the State of California and in the County of Los Angeles.

18 4. Venue is proper in this County pursuant to Section 410.10 of the Code
19 of Civil Procedure in that a substantial part of the events giving rise to the claims
20 occurred in this County such as significant sales of the InBev products in this
21 County, sales of the alleged infringing product occurred in this County, the contract
22 was to be performed in this County, and Defendant InBev is not a resident of the
23 United States and thus may be sued in any county where it does business.

24 **SAN ANTONIO AND STELLA ROSA**

25 5. San Antonio is a family-owned corporation that is engaged in, among
26 other things, the production, sale and international distribution of wines. It has been
27 in business since 1917 and, over the years, its wines have won numerous wine
28 competition awards. Some of its estate wines are San Simeon, Opaque, Maddalena


1 and Bodega de San Antonio.


2 6. Since its founding, the winery has persevered through prohibition, the
3 Great Depression, and World War II to become one of the most awarded wineries in
4 California with locations in Monterey, Paso Robles and Napa Valley, with four
5 generations of family contributing to the company's success including, being
6 honored as the American Winery of the Year in 2018 by Wine Enthusiast.

7 7. In the early 2000's San Antonio discovered an unmet need in the wine
8 market. Not all consumers had a palette for traditional red and white wines. People
9 wanted something sweeter, with less alcohol and not as heavy as a Chardonnay or
10 Merlot. The introduction of STELLA ROSA wine created a new market to satisfy
11 this need which has been hugely successful. STELLA ROSA wine is imported from
12 Italy. It is a low alcohol (5.5 % or less), fizzy, sweet or semi-sweet, prosecco style
13 wine. Examples of STELLA ROSA wine bottles are shown below.



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19 8. A summary of the San Antonio Winery's U.S. Federal Registrations
20 protecting the STELLA ROSA brand are shown in the table below collectively
21 referred to as the STELLA ROSA Marks:

22 Trademark	Reg. No.	Reg. Date	Class(es) Goods/Services
23 24  25 26 STELLA ROSA	3663013	Aug. 4, 2009	Class 33: Wines
27 28 STELLA ROSA	4000417	July 26, 2011	Class 33: Wines

1	STELLA ROSA	4621690	October 14, 2014	Class 29: Jellies
2				Class 30: Sauces
3	STELLA ROSA	4522059	April 29, 2014	Class 43: Bistro Services
4				
5	STELLA ROSA	4575423	July 29, 2014	Class 25: Clothing, namely, hats and shirts.
6				
7	STELLA ROSA	4636301	Nov. 11, 2014	Class 3: Lip balm
8				Class 6: Metal key chains
9				Class 21: Cocktail shakers, Ice Buckets
10				
11		4696085	March 3, 2015	Class 33: Wines
12				
13				
14				

15
16 9. In addition to the registrations above, the company owns nineteen (19)
17 additional “STELLA” trademark registrations in the United States and numerous
18 others internationally.

19 10. These registrations constitute prima facie evidence of the validity of the
20 STELLA ROSA Marks, of San Antonio’s ownership of those marks, and of San
21 Antonio’s right to use these in connection with the goods specified in those
22 registrations and in connection with related goods and services.

23 11. Between 2015-2019 San Antonio Winery’s total sales of wines under
24 the STELLA ROSA Marks has been in excess of \$730,000,000. Sales of STELLA
25 ROSA wine in 2019 were in excess of \$220,000,000.

26 12. The success of the STELLA ROSA brand was recently recognized in
27 the United States District Court for the Southern District of Florida when the Hon.
28 Robert N. Scola issued a temporary restraining order prohibiting a knock-off BELLA

1 ROSA wine from being sold¹.

2 13. San Antonio has spent in the last two years alone in excess of
3 \$30,000,000 in marketing its wines bearing the STELLA ROSA Marks. For
4 example, STELLA ROSA wine has been featured multiple times on a float in the
5 nationally televised, world-famous Tournament of Roses Parade, in print
6 advertisements such as in Wine Spectator and Wine Enthusiast, and on over 600
7 billboards in 42 states.

8 14. San Antonio has used the STELLA ROSA Marks to identify its goods
9 and to distinguish them from the goods and services made and sold or offered by
10 others by, among other things, prominently displaying the marks on its products, on
11 its Internet websites and on advertising materials promoting its goods.

12 15. The presence of the STELLA ROSA Marks on San Antonio's goods
13 indicates to the public that goods provided under the STELLA ROSA Marks
14 originate with, or are provided by, San Antonio. San Antonio adheres to strict
15 quality standards in the manufacture of its wines. Thus, the consuming public has
16 come to associate the STELLA ROSA Marks with wines and other goods of high
17 quality. As a consequence of all of the foregoing, the San Antonio STELLA ROSA
18 Marks have attained considerable value and the goodwill associated with them
19 represents a valuable business asset.

20 16. San Antonio initiated sales of STELLA ROSA non-alcoholized wine,
21 made in Italy, in about June 2020. Pictures of the various non-alcoholized STELLA
22 ROSA wine bottles are shown below. To protect the STELLA ROSA mark for non-
23 alcoholized wine San Antonio filed multiple trademark applications for the mark
24 STELLA ROSA in International Class ("IC") 32, including in the United States,
25 Mexico and Colombia.

26 _____
27 ¹ Case 1:20-cv-20515-RNS Document 32 Entered on FLSD Docket 02/24/2020
28



INBEV AND SAN ANTONIO WINERY

17. San Antonio is informed and believes, InBev manufactures and distributes several brands of beer including, STELLA ARTOIS. InBev is gigantic. On information and belief, according to Schwab.com, InBev has a market capitalization of over \$100 billion. And InBev has operations in over 30 countries and sales in over 130 countries.

18. On further information and belief, Defendant InBev owns all of the STELLA ARTOIS U.S. trademark registrations. For example, U.S. Registration No. 1156584 for STELLA ARTOIS for use in connection with beer is owned by Anheuser-Busch InBev S.A.

19. On or about October 24, 2013, San Antonio and InBev entered into a world-wide Co-Existence Agreement. A true and correct copy of the title page and redacted signature page is attached as Exhibit "A".² Although the Co-Existence Agreement has no confidentiality provision, just in case InBev considers it confidential, San Antonio is not attaching a complete copy of the Co-Existence Agreement.

20. The Co-Existence Agreement sets forth terms for the respective parties

² There is an Amendment to the Co-Existence Agreement but it has nothing to do with the use of STELLA.

1 to abide by, "...to protect their respective interests, avoid trademark conflicts and/or
2 any consumer confusion in the marketplace..." The Coexistence Agreement allows
3 San Antonio to use STELLA ROSA for wine, but not beer.

4 21. "Stella" is a very common formative for alcoholic beverages, there
5 being over 41 registrations in the U.S. alone for marks containing "Stella" for
6 alcoholic beverages. In fact, Winebow, Inc. owns U.S. registration number 2624860
7 for Stella by itself for wines, namely red and white.

8 22. On or about November 6, 2020, InBev through counsel sent an email to
9 San Antonio counsel informing them that InBev was not pleased that San Antonio
10 had filed numerous STELLA ROSA trademark applications in Class 32.

11 23. Counsel for San Antonio responded that the use and registration of
12 STELLA ROSA in connection with non-alcoholized wine was not prohibited by the
13 Co-Existence Agreement. Counsel for San Antonio further represented that all
14 foreign trademark applications, to the extent not so limited, would all be amended
15 such that the only class 32 goods protected would be wine, namely "non-alcoholized
16 wines".

17 24. According to an email dated December 2, 2020, this was unacceptable
18 to InBev with InBev counsel stating that instructions were given to oppose all San
19 Antonio STELLA ROSA trademark applications in Class 32.

20 25. In response to the December 2, 2020 email, San Antonio requested a
21 discussion between principals of San Antonio and InBev. To date, no response was
22 ever received.

23 26. In breach of the Co-Existence Agreement and at the time of filing this
24 complaint, InBev has already initiated opposition proceedings against San Antonio's
25 STELLA ROSA class 32 applications in Mexico and Colombia.

26 27. San Antonio is not aware of any confusion between its STELLA ROSA
27 wines and any product sold by InBev anywhere in the world. InBev has never
28 identified any such confusion.

1 28. By reason of Defendant's acts, as alleged herein, San Antonio has
2 suffered damage, including attorney fees, incurred due to InBev's breach of the Co-
3 Existence Agreement.

4 **FIRST CLAIM FOR RELIEF**

5 **(Breach of Co-Existence Agreement)**

6 29. San Antonio repeats and re-alleges paragraphs 1 through 28 as though
7 fully set forth in this paragraph.

8 30. Plaintiff and Defendant entered into the Co-Existence Agreement,
9 effective as of October 24, 2013, which is incorporated by reference.

10 31. According to the Agreement, San Antonio can use STELLA ROSA in
11 connection with wine.

12 32. Plaintiff has performed all conditions, covenants, and promises required
13 on its part to be performed in accordance with the terms and conditions of the Co-
14 Existence Agreement.

15 33. However, Defendant InBev has breached the Agreement by objecting to
16 and opposing San Antonio's use of STELLA ROSA in connection with a wine
17 subcategory, namely non-alcoholized wines.

18 34. As a result of Defendant's breach of the Co-Existence Agreement, as
19 alleged herein, San Antonio will and has suffered damage, and so far the incurrence
20 of foreign associate fees with regard to the oppositions.

21 35. Defendant's breach of the Co-Existence Agreement, and particularly its
22 threat to oppose San Antonio's U.S. application for STELLA ROSA and its implicit
23 threat to prevent San Antonio from selling STELLA ROSA non-alcoholized wine,
24 will cause injury to San Antonio.

25 **SECOND CLAIM FOR RELIEF**

26 **(Declaration of Non-Infringement)**

27 36. San Antonio repeats and re-alleges paragraphs 1 through 28 and 30
28 through 35 as though fully set forth in this paragraph.

1 37. There is presently a dispute between San Antonio and the Defendant
2 regarding the parties' rights.

3 38. The Defendant, on the one hand, contends that San Antonio cannot use
4 or register STELLA ROSA in connection with non-alcoholized wines.

5 39. San Antonio, on the other hand, contends that its use of STELLA ROSA
6 in connection with non-alcoholized wines will not cause consumers to believe that
7 San Antonio's wine comes from InBev or that San Antonio's wine is affiliated with,
8 connected with or sponsored or licensed by In Bev because, among other things:

- 9 a. As the comparison below shows, the parties' packaging are different
10 and they make different commercial impressions.



- 23 b. San Antonio's bottles for its non-alcoholized wines are solid with
24 a design imprinted on the bottle while STELLA ARTOIS bottles
25 are plain and clear with either all white or cream paper labels
26 affixed. Wine shaped bottles are different and larger in
27 appearance than beer bottles. San Antonio's non-alcoholized
28 wines all have STELLA ROSA prominently displayed with its

1 signature trademarked “crown” which is the subject of U.S.
2 Registration No. 4696085. The producer, San Antonio Winery is
3 clearly depicted on the rear of the bottles (not shown).

4 c. Wine is wine regardless of the level of alcohol. Wine is
5 fermented grape juice. Non-alcoholized wine has the alcohol
6 removed post fermentation. This is similar to non-alcoholic beers
7 where the alcohol is removed or reduced to zero yet the beverage
8 is still referred to as “beer”.

9 d. STELLA ROSA and STELLA ARTOIS have co-existed in the
10 marketplace for over seventeen (17) years. There has been no
11 actual confusion in the marketplace regarding the parties’
12 respective products. The absence of actual confusion
13 demonstrates that it is highly unlikely there will be any likelihood
14 of confusion in the future.

15 40. For all of the foregoing reasons, among others, San Antonio contends
16 that its use of STELLA ROSA in connection with the production, promotion and sale
17 of non-alcoholized wines does not infringe any valid, enforceable trademark rights of
18 InBev or constitute unfair competition.

19 41. Based upon the foregoing, pursuant to Section 1060 of the Code of Civil
20 Procedure, San Antonio is entitled to a judicial declaration as to whether its use and
21 registration of STELLA ROSA in connection with non-alcoholized wines infringes
22 any valid rights of InBev or constitutes unfair competition.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, San Antonio prays for relief as follows:

- 25 1. That the Court declare that San Antonio has not infringed any valid,
26 protectable trademark rights of InBev;
- 27 2. That the Court declares that InBev’s objection and/or opposition to San
28 Antonio’s use or registration of the mark STELLA ROSA in connection with non-

1 alcoholized wines is a breach of the Co-Existence Agreement;

2 3. For an injunction ordering InBev not to oppose any of San Antonio's
3 trademark applications for STELLA ROSA in Class 32 for non-alcoholized wine and
4 to not interfere with San Antonio's sales and marketing of STELLA ROSA non-
5 alcoholized wine;

6 4. For an award of costs as provided by law; and

7 5. For such other and further relief as the court deems just and proper.,
8 including the attorney fees, especially US and foreign attorney fees in dealing with
9 the oppositions filed by InBev in breach of the Coexistence Agreement.

10
11 DATED: January 8, 2021

Respectfully submitted,

CISLO & THOMAS LLP

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13
14 By: /s/Jeffrey G. Sheldon
15 Jeffrey G. Sheldon

16 Attorneys for Plaintiff,
17 SAN ANTONIO WINERY, INC.

1 **REQUEST FOR JURY TRIAL**

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3 San Antonio requests a trial by jury all of which may properly be tried by a
4 jury.

5
6 DATED: January 8, 2021

Respectfully submitted,

7 CISLO & THOMAS LLP

8
9 By: /s/Jeffrey G. Sheldon

10 Jeffrey G. Sheldon

11 Attorneys for Plaintiff,
12 SAN ANTONIO WINERY, INC.

UNFILED

Exhibit A

CO-EXISTENCE AGREEMENT

This Co-Existence Agreement ("Agreement") is made as of the 24th day of October 2013

between

Anheuser-Busch InBev S.A., a company incorporated in Belgium having a place of business at Grand-Place 1, 1000 Brussels, Belgium (hereafter referred to as "**ABI**")

and

San Antonio Winery Inc., a California corporation having a place of business at 737 Lamar Street, 90031, Los Angeles, United States of America (hereafter referred to as "**SAW**").

Throughout this Agreement, ABI and SAW are hereafter jointly referred to as "the Parties" and individually as a "Party".





Drawn up in two originals, each Party acknowledging receipt of one original.


For San Antonio Winery, Inc.

By

(signature)

(name)

(title)


Anthony Riboli
Vice President
10/24/13

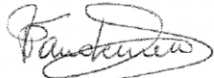
For Anheuser-Busch InBev S.A.

By

(signature)

(name)

(title)



Philippe Wambart
Legal Director



Benoit Loore
VP Corporate Governance
Assistant Corporate Secretary

